***THE HONBLE MS. JUSTICE G. ROHINI**

–

+WRIT PETITION NO.17802 OF 1997

%Dated 18-06-2004

The Tirumala Tirupati Devasthanams, Tirupati,

rep. by its Executive Officer Sri M.K.R. Vinayak,

s/o. M. Kotaiah Chowdary, 57 years. **PETITIONER**

VERSUS

$ 1. The Chairman-cum-Presiding Officer,

Industrial Tribunal-cum-Labour Court,

Ananthapur and 5 others. RESPONDENTS

! Counsel for Petitioner: Mr. A.K.JAYA PRAKASH RAO,

S.C. for T.T. Devasthanams

^Counsel for Respondents : Mr. P.Panduranga Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1. 2000 (1) LLJ 582
2. 1995(1) LLJ 395
3. 1995(3) ALD 190
4. 2002 AIR SCW 4421

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 17802 of 1997

Between:

The Tirumala Tirupathi Devasthanams Rep by its Executive Officer M.K.R.Vinayak s/o.M.Kotaiah Chowdary
Tirupathi.

..... PETITIONER

AND

1 The Chairman -Cum-Presiding Officer
Industrial Tribunal -Cun-Labour Court Anantapur.
2 D.Eshwariah S/o.D.Ramaiah
3 E.Ramam Murthy S/o. T.Eshwaraiah.
4 K.Surendra S/o.K.Kandhaswamy Vodiyar
5 N.Manavalaiah S/o.L.S.Narayana.
6 N.Krishna Murthy S/o.L.S.Narayana.
(Respondents 2 to 6 are working as Flower Tiers in the office of the Garden Superintendent , TTD, Tirumala Tirupathi, Chittoor Dist.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ , order or direction more particularly one in the nature of writ of Mandamus calling for the records in M.P.No.62/94 , on the file of the 1st respondent the chairman -Cum-Presiding Officer, Industrial Tribunal-Cum- Labour Court, Anantapur , and quash the order Dt: 25-3-1997 in M.P.No.62/94 on the file of the 1st respondent , and pass such other order or orders.

Counsel for the Petitioner : MR.A.K.JAYAPRAKASH RAO,

S.C. for T.T. Devasthanams

Counsel for the Respondents 2 to 6 : MR.P.RAGHAVENDRA REDDY

The Court Made the Following :

-

ORDER :

This Writ Petition is filed by Tirumala Tirupathi Devasthanams (T.T.D.), Tirupathi assailing the order dated 25-03-1997 in M.P.No.62 of 1994 on the file of the Court of the Industrial Tribunal-cum-Labour Court, Ananthapur.

The respondents 2 to 6 herein filed the said M.P.No.62 of 1994 under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') for recovery of the amount alleged to be due towards the difference of the wages for the period from 01-07-1984 to 31-07-1994 and the same was allowed by the Labour Court as prayed for which order is under challenge in this Writ Petition.

The respondents 2 to 6 (hereinafter referred to as 'the workmen') were appointed by the T.T.D. as Gardeners, initially on NMR basis and subsequently their services were regularized as Gardeners. They claimed before the Labour Court that though they were appointed as Gardeners, eversince their appointment they have been assigned the duties of Flower Tiers. Their grievance was that though they have been discharging the duties of the Flower Tiers, they have not been paid the scale of pay to which the Flower Tiers are entitled to. It was contended that they are entitled to wages on par with the Flower Tiers on the basis of the doctrine of 'equal pay for equal work.' Thus, they filed M.P.No.62 of 1994 under Section 33-C(2) of the Act for recovery of the alleged difference of wages estimated by them at Rs.30,537-85 ps to each petitioner for the period in question together with interest and costs.

The said petition was contested by the T.T.D. stating that the workmen have been working as 'Gardeners' but not as 'Flower Tiers'. It was further stated that they were only assisting the Flower Tiers as and when required during the festivals and

at the time of rituals and therefore the question of payment of equal pay on par with Flower Tiers does not arise. It was also contended that since their status as Flower Tiers itself is in dispute and particularly since the question with regard to their entitlement to the benefits claimed by them has not yet been adjudicated, the petition filed under Section 33-C(2) of the Act is not maintainable.

One witness was examined on behalf of the workmen and Exs.W-1 to W-8 documents were marked. On behalf of the T.T.D., one witness was examined and Ex.M-1 document was marked. The Labour Court having considered the evidence on record, both oral and documentary concluded that the workmen are entitled to the amounts claimed by them in the light of the principle 'equal pay for equal work'. Accordingly, the petition was allowed as prayed for directing the T.T.D. to pay the amounts claimed by the workmen within 4 months failing which the same shall carry simple interest at 6% per annum.

I have heard the learned Counsel for the petitioner and perused the material on record.

The learned Counsel appearing for T.T.D. contended that the finding recorded by the Labour court that the workmen have been discharging the functions of Flower Tiers is not based on the evidence on record. It is submitted that as per Service Regulations, the Gardeners are entitled for promotion to the post of Flower Tier according to their seniority as well as the skill in the art of Flower Tieing. Thus the two posts are entirely different and the workmen who were only assisting the Flower Tiers as and when required, under no circumstances can be held to be entitled for payment of wages on par with Flower Tiers which is a higher post. It is also contended that the Labour Court committed an error in entertaining the petition under Section 33-C(2) of the Act since such a petition is not maintainable without there being any prior adjudication as to their entitlement for the amounts claimed.

On the other hand, the learned Counsel for the respondents 2 to 6 contended that the finding of fact recorded by the Labour Court that the workmen have been

discharging the functions of regular Flower Tiers does not warrant any interference in exercise of writ jurisdiction. He contends that the claim of the workmen which is based on the doctrine of 'equal pay for equal work' has been rightly accepted by the Labour Court and therefore the impugned Award is justified and no interference is called for.

For proper appreciation of the rival contentions, it is necessary to note Section 33-C(2) of the I.D. Act which runs as under :

> "*33-C*. *Recovery of money due from an employer* :-
>
> (1) ……
>
> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within in a period not exceeding three months (inserted by the Act. No.46 of 1982, Sec.,19-A, w.e.f. 21-08-1984).
>
> Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit (inserted by Act No.46 of 1982, Sec.19-B, w.e.f.21-08-1984).
>
> (3) ……
>
> (4) ……
>
> (5) ……."

The scope of Section 33–C(2) of the Act has been considered by the Apex Court as well as this Court in a catena of decisions and it has been held that the proceedings under the said Section are in the nature of execution proceedings and it empowers the Labour Court to grant the relief in respect of a matter which was based on an existing right and where the claim of the workman had been duly adjudicated upon. It is true that the purpose of Section 33-C(2) of the Act is to provide speedy and effective remedy to a workman to receive any money or any benefit which can be computed in terms of money. However, the claim is not maintainable unless the

rights of the parties are adjudicated and crystallized in the form of an award or order.

Further as held by the Supreme Court in DIRECTOR GENERAL (WORKS), C.P.W.D. v. ASHOK KUMAR and MUNICIPAL CORPORATION OF DELHI v. GANESH RAZAK the Labour Court has no jurisdiction to first decide the entitlement of the workmen and then proceed to compute the benefits so adjudicated on that basis in exercise of its powers under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer that an application under Section 33-C(2) of the Act would lie. It is also a well settled principle of law that where the question of very maintainability of the petition is involved, such a question is required to be determined at the threshold and the question of examining the claim on merits arises only thereafter if the application is held to be maintainable.

In the case on hand, admittedly the respondents 2 to 6 herein were initially engaged as NMR Gardeners and subsequently their services were regularized in the posts of Gardeners. However, their plea before the Labour Court was that since they have been performing the duties of Flower Tiers they are entitled to receive the wages on par with the Flower Tiers.

It is not in dispute that the post of Flower Tier is a higher post. The plea that they are discharging the functions of Flower Tiers was specifically denied by the T.T.D. in their counter before the Labour Court. Even the Office Superintendent in the Garden Department who deposed as M.W.1 on behalf of T.T.D. in his evidence stated that the duty of the Gardener is only to maintain the gardens and the workmen were entrusted the duties of Flower Tiers only during important functions such as "*Brahmotsavam*".

It is also pertinent to note that in the counter itself, a specific objection was raised by the T.T.D. as to the maintainability of the petition under Section 33-C(2) of the Act. It was pointed out that in the absence of prior adjudication with regard to the entitlement of the workmen for higher wages on par with Flower Tiers, the petition

under Section 33-C(2) for recovery of difference of wages is not maintainable. In spite of the said specific objection raised by the T.T.D., the Labour Court did not choose to formulate a point as to the maintainability of the petition under Section 33-C(2) of the Act and merely proceeded on the merits of the case. It was observed that since the Garden Superintendent in Ex.W-8 letter mentioned that the petitioners are attending to the work of Flower Tiers, the denial of the management in the counter is formal and not supported by any material and therefore the workmen are entitled for the claim. The Labour Court proceeded further to record a finding as to the nature of work and the status of the workmen and held that in the light of the doctrine of 'equal pay for equal work,' they are entitled for the relief.

The said conclusion of the Labour Court is erroneous and beyond the scope of Section 33-C(2) of the Act. This is a case where the T.T.D. specifically denied the claim of the workmen that they are discharging the functions of the Flower Tiers. Admittedly, there was neither an award nor any adjudication with regard to the nature of the work being performed by the workmen and particularly with regard to their entitlement for higher wages on par with Flower Tier which is a higher post. Thus when their claim for recovery of the alleged difference of wages is not based on a pre-existing right, the same could not have been the subject matter of decision under Section 33-C(2) of the Act.

Therefore, in my considered opinion, the Labour Court has no jurisdiction to entertain the petition under Section 33-C(2) of the Act when the claim that they are discharging duties similar to Flower Tiers itself is under dispute.

The decision cited by the learned Counsel for the respondents in *COMMISSIONER, MUNICIPALITY, TIRUPATI v. M.SRINIVASULU* is not applicable to the facts on hand. In the said case, the factual assertion made by the claimants therein was not at all denied by the management in its counter. On the other hand, the Management Witness in his evidence categorically stated that the functions and duties discharged by the workmen and the permanent employees are identical and one and the same. In the circumstances, it was held that since there is no dispute about the duties discharged by the workmen, the doctrine of 'equal pay

for equal work' should come into play and the management is required to obey the constitutional command.

As observed above, in the case on hand the claim of the respondents 2 to 6 herein has been categorically denied by the T.T.D. and it was consistently pleaded that the respondents 2 to 6 herein have not been performing the functions of Flower Tiers. Thus, there is a clear dispute about their entitlement to higher wages and therefore the Labour Court ought not to have entertained the petition under Section 33-C(2) of the Act. Hence, I hold that M.P.No.62 of 1994 filed under Section 33-C(2) of the Act is not maintainable and on that ground alone the impugned order is liable to be set aside.

The learned Counsel for the petitioner / T.T.D. has also contended that the claim of the respondents 2 to 6 on the basis of the doctrine of 'equal pay for equal work' is also liable to be rejected in the light of the ratio laid down by the decision of the Supreme Court in *STATE OF ORISSA v. BALARAM SAHU*. The learned Counsel has relied upon the following observations made by the Supreme Court.

> "Though 'equal pay for equal work' is considered to be concomitant of Art.14 as much as 'equal pay for equal work' will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference. Further, to claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on par with the other group vis-à-vis an alleged discrimination."

Since the impugned award is set aside on the ground that the petition is not maintainable under Section 33-C(2) of the Act and that the impugned order is without jurisdiction, I am not inclined to express any opinion on the merits of the case. In the circumstances, it would be appropriate to leave it open to the respondents 2 to 6 herein to work out their remedies and to get their entitlement adjudicated.

Accordingly, the Writ Petition is allowed and the impugned order is set aside. It is made clear that this shall not preclude the respondents 2 to 6 to work out the appropriate remedy as available under law for adjudication of the claim made in M.P.No.62 of 1994. There shall be no order as to costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this 18th day of June, 2004.

18th June, 2004.

gbs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman -Cum-Presiding Officer
Industrial Tribunal -Cun-Labour Court Anantapur.

2.2CD copies

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.17802 OF 1997

DATE : 18-06-2004.

BETWEEN :

Tirumala Tirupati Devasthanams …Petitioner

AND

The Chairman-cum-Presiding Officer,

Industrial Tribunal and others. … Respondents

Counsel for the petitioner :Mr. A.K.Jaya Prakash Rao

Counsel for the respondents : Mr. P.Raghavendra Reddy